

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Rules and Regulations Implementing Minimum Customer |) | CG Docket No. 02-386 |
| Account Record Exchange Obligations on All Local |) | |
| and Interexchange Carriers |) | |
| _____ |) | |

**COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTA”)¹ submits its comments through the undersigned and pursuant to the Federal Communications Commission’s (“FCC’s or Commission’s”) Notice of Proposed Rulemaking² (“NPRM”) in the above-referenced proceeding. In the NPRM, the Commission seeks further comment on whether it should impose mandatory minimum Customer Account Record Exchange (“CARE”) obligations on all local and interexchange carriers.³

INTRODUCTION AND BACKGROUND

USTA supports the sharing of CARE information between local exchange carriers (“LECs”) and interexchange carriers (“IXCs”). However, the FCC should not amend its rules to require minimum mandatory CARE obligations. There is no reason for the FCC to act independently of the Ordering Billing Forum (“OBF”), a part of the Alliance for Telecommunications Industry Solutions (“ATIS”), to create new regulations to provide for

¹ USTA is the Nation’s oldest trade organization for the local exchange carrier industry. USTA’s carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Rules and Regulations Implementing Minimum Exchange Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, Notice of Proposed Rulemaking, CC Docket No. 02-386, FCC 04-50 (rel. Mar. 25, 2004) (“NPRM”).

³ NPRM at ¶1.

minimum mandatory CARE obligations. Rather, the OBF is the proper forum for vetting issues concerning CARE.

A. CARE is a long - standing workable system for data exchange.

CARE is a non-mandatory system by which certain information is exchanged between IXC's and LEC's. The data exchanged under CARE is important to establishing and maintaining customer accounts, "and to execute and confirm customer orders and customer transfers from one long distance carrier to another."⁴ The CARE process was created almost two decades ago, after the breakup of AT&T. The breakup of AT&T subsequently led to the creation of ATIS, which formed the OBF. The OBF created "voluntary industry standards for CARE among carriers."⁵

B. Joint Petitioners and Americatele request that the FCC institute mandatory CARE obligations.

In November 2002, AT&T Corporation, Sprint Corporation, and Worldcom, Inc. ("Joint Petitioners")⁶ and Americatele Corporation ("Americatele")⁷ filed petitions regarding CARE. Joint Petitioners asked the FCC to implement minimum mandatory CARE obligations on all LEC's and IXC's to ensure the exchange of information necessary to maintain accurate billing records and

⁴ *Id.* at ¶2.

⁵ *See Id.* at ¶3 (stating that "CARE generically identifies data elements that might be shared between carriers and supports a data format intended to facilitate the mechanized exchange of that information"). "It aims to provide a consistent definition and data format for the exchange of common data elements." *Id.*

⁶ Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corporation, Sprint Corporation, and Worldcom, Inc. (Nov. 22, 2002) ("Joint Petition").

⁷ Obligations of All Local Exchange Carriers to Provide Timely and Accurate Billing Name Address Service to Interexchange Carriers, filed by Americatele Corporation (Sept. 5, 2002) ("Americatele Petition").

deliver customer service.⁸ Americatele's petition sought clarification that: in addition to LECs, competitive local exchange carriers ("CLECs") should be obligated to provide a billing name and address ("BNA") service; all LECs should have an obligation to supply the appropriate presubscribed long distance carrier with the identity of the new servicing carrier when a LEC customer changes local service; and any LEC no longer serving a particular end user customer must provide a requesting long distance carrier the identity of the LEC now serving that end user.⁹

In December 2002, the FCC issued a Public Notice¹⁰ and sought comment on the Joint Petitioners' and Americatele's petitions. Based on the comments it received,¹¹ the FCC has decided to focus primarily on the Joint Petitioners' petition and will address Americatele's assertion that BNA service must apply to all LECs, including CLECs.¹²

C. The FCC should consider that the intent of the 1996 Act is to rely on market-based competition rather than regulation.

USTA believes that mandatory CARE obligations are unnecessary and contrary to the intent of the Telecommunications Act of 1996 ("1996 Act"). The intent of the 1996 Act was to promote competition in the telecommunications marketplace through reduction of regulation and

⁸ Joint Petitioners at 1.

⁹ See Americatele Petition at 1-2.

¹⁰ See *Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking filed by Americatele Corporation; Pleading Cycle Established for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on all Local and Interexchange Carriers filed by AT&T Corp., Sprint Corporation, and WorldCom Inc.*, DA 02-3550, CG Docket No. 02-386, 17 FCC Rcd 25535 (2002).

¹¹ See USTA Reply Comments, CG Docket No. 02-386 (Feb. 4, 2003) (commenting that the FCC should not create rules in order to ensure that CARE obligations are met by LECs, as the OBF is the proper venue to vet issues concerning CARE).

¹² See NPRM at ¶ 9 (stating at footnote 37 that the FCC did not tackle Americatele's request for declaratory ruling and "its proposal to establish a national database of carrier ownership information related to each telephone line").

the opening of markets to provide consumers with new technologies at reasonable rates. We believe that consumer needs are better satisfied through free markets, rather than increased regulation. Free markets provide consumers with a choice of providers at reasonable rates; better quality of service naturally ensues. Thus, the FCC should rule consistently with the intent of the 1996 Act and let free markets address customer satisfaction.

DISCUSSION

USTA urges the Commission not to adopt any mandatory CARE requirements in this proceeding because such requirements: would create unnecessary regulation; impose unreasonable costs and personnel burdens; infringe on customer privacy; require system changes that are costly; and are unnecessary for wireline-to-wireless portability. The OBF is the proper industry forum to deal with issues involving CARE. Finally, the FCC must dissuade states from implementing CARE guidelines because, like federal guidelines, they are unwarranted.

A. The FCC should not impose mandatory CARE obligations on LECs because such requirements are unnecessarily burdensome.

Competitive markets, not mandatory regulation, will ensure that consumers receive the quality of service they seek. Likewise, carriers must be allowed the opportunity to provide services and consumer choices that best fit their business model. In today's competitive marketplace, consumers can choose among a plethora of service providers (whether wireline, wireless or via the Internet) depending on their own needs. By imposing mandatory CARE regulation on LECs, the FCC will be imposing more regulation on only one sector of the industry, which will further impede the wireline sector's ability to effectively compete against other voice providers that use alternative platforms to deliver voice services. Simply put, the FCC would be mandating increased regulation that would further impede incumbent LECs from

effectively competing in an environment where they face increasing competition from unregulated rivals.

Mandatory CARE obligations will not “fix” the alleged problem that the Joint Petitioners seek to repair. As discussed below, the Joint Petitioners’ argument that regulation is necessary is untrue and will ultimately place burdensome and costly obligations upon all LECs. In some cases, LECs will not even have the information sought by the petitioners and if they do, issues of customer privacy may arise. In addition, mandatory CARE requirements would be anti-competitive. Incumbent LECs would be required to track all customer changes and then provide competitors with detailed information concerning customer accounts and BNA.

Moreover, mandatory CARE standards will not eliminate consumer complaints, as those complaints usually involve the billing of charges. Once a customer pre-subscribes to an IXC and that primary IXC is input into the central office switch, all calls at that point are routed through to the long distance carrier. At that point, the customer and the long distance provider have entered into an agreement that establishes a calling plan and implements service, which is outside the purview of the LEC. Thus, mandatory CARE standards will not resolve the majority of customer complaints involving the incorrect billing of IXC rates.

1. The FCC should interpret the term LEC to include CLECs for providing CARE.

USTA agrees that the FCC’s rules regarding BNA do not differentiate between the roles and responsibilities of incumbent LECs and CLECs, “and places the obligations of notice and access on all LECs.”¹³ CLECs must then also provide IXCs with CARE. We note that the difficulties that IXCs are experiencing are not from incumbent LECs, but rather from CLECs,

¹³ See *Id.* at ¶9 (referring to 47 C.F.R. § 64.1201).

who do not participate in the CARE data exchange.¹⁴ As the FCC clearly states, “the growth of customer migration in the competitive local exchange market has affected the ability of long distance carriers to bill for long distance services rendered to those customers.”¹⁵ Joint Petitioners and Americatel do not raise issues of incumbent LECs not providing CARE or BNA information; the difficulty lies with new entrants who are not participating in the CARE process. The FCC does not need to create new rules to require LECs to comply with CARE; CLECs merely need to participate in the OBF and share CARE information.

2. LECs should not be required to notify the long distance carrier when a customer changes or terminates its local service because of issues of transparency and customer privacy.

It is not always apparent to a LEC when a customer changes or terminates its service with another local service provider. The competitor winning a customer has the obligation to initiate and exchange CARE information with the customer’s IXC. Conceivably, an incumbent LEC would only know the identity of the new local service provider when the former customer ports their number to that provider and the switch occurs pursuant to number portability. Moreover, LECs may not always have the ability to provide the identity of the new service provider information to the IXC. If the FCC required LECs to do so, it would be overly burdensome, administratively cumbersome, and quite costly.

Finally, we believe for reasons of privacy that the burden should fall on the customer to notify the former local service provider that they have changed or terminated their local service. A customer may not want to do so, and they should have that right. At a minimum, in order for the customer to have seamless long distance service, the customer would need to notify its new

¹⁴ *Id.* at ¶8.

¹⁵ *See Id.* at ¶2 (citing the Americatel Petition at 4, 6; Joint Petition at 3, 5).

provider that they receive long distance service from XYZ. The customer should also be obligated to notify the long distance provider when it subscribes to a new local service provider, even if it is a wireless service provider.

3. The recommended minimum CARE standards proposed by the Joint Petitioners will require system changes, which are costly and should not be imposed on rural LECs.

The recommended CARE standards would impose significant costs on incumbent LECs without substantial benefit to the consumer. Incumbent LECs would need to make system changes, develop reporting requirements, incur the costs of transmitting data to other carriers, hire additional personnel to handle the reporting requirements and provide maintenance of the CARE system. The Joint Petitioners have asked LECs to make these changes without any proposed cost recovery method or cost sharing method between LECs and IXC. Thus, the recommended CARE standards will cause incumbent LECs to pass along CARE costs to the consumer through higher rates, which will place incumbent LECs at a competitive disadvantage in the intermodal voice marketplace.

Moreover, mandatory CARE standards should not be imposed upon rural LECs because of the substantial costs and the limited number of customers served. Rural incumbent LECs still process presubscribed interexchange carrier changes manually and cannot justify the substantial cost to automate the process and begin using the complex CARE coding system. In a number of instances, rural LECs are the only providers of local service, so there is no need to inform the IXC that there has been a change in local service provider. Hence, we ask that the FCC remain mindful of the plight of the rural incumbent LEC through the potential imposition of unwarranted CARE regulation.

4. CARE obligations are unnecessary for wireline-to-wireless number portability, thus not requiring a new CARE code “w.”

USTA is unaware of any problems associated with CARE and wireline-to-wireless local number portability. LECs should not be required to notify IXC's when a customer chooses to port its number intermodally. Again, it should be up to the customer, not the LEC, to inform the IXC, for reasons of personal privacy. In addition, the need for a new CARE code “w” to designate local lines ported to wireless carriers is unnecessary. A new CARE code “w” would require LECs to make costly upgrades to their automated CARE system and update their current CARE processes merely to accommodate IXC's, as wireless carriers provide nationwide calling.

5. The FCC should not adopt performance measurements and requirements for CARE obligations because the OBF remains the proper forum to consider and adopt such requirements, when LECs and IXC's cannot agree.

The OBF is the proper forum to address CARE performance measurements or requirements, as it is the industry standards body charged with creating workable CARE standards to govern information exchange. Incumbent LECs and IXC's have traditionally agreed to CARE performance measurements and requirements. When LECs and IXC's cannot agree, USTA proposes that the OBF create performance measurements and requirements that would be used as a baseline within the industry. Privately negotiated CARE agreements should continue to be the norm within the industry, except when the parties cannot agree, and then OBF processes should be used.

Moreover, all segments of the industry can and do participate in the OBF. By finding that CLEC's must participate in the OBF, the FCC would address the Joint Petitioners' and AmeriCatel's concerns. For nearly two decades, the FCC and the industry have relied on the

OBF to address CARE. It remains the proper venue and the FCC should defer to the OBF and not mandate minimum CARE requirements.

B. The FCC must ensure that the states do not impose burdensome regulatory CARE obligations.

There is no need for federal or state regulation of CARE. If the FCC were to mandate CARE requirements, the states would perceive the federal rules as a benchmark for establishing more costly and burdensome CARE regulations. The FCC should dissuade the National Association for Regulatory Utility Commissioners from creating model guidelines that would require adoption on a state-by-state basis. If the states adopt CARE requirements, regulations between the states and the federal government would potentially be inconsistent. In addition, LECs that provide services in multiple states would likely have to comply with inconsistent state laws. This would be extremely burdensome, as LECs would be forced to meet the potential requirements of multiple federal and state CARE guidelines.

CONCLUSION

For the foregoing reasons, CARE information should be shared between all LECs and IXC. The FCC should not impose mandatory CARE obligations on LECs, as the OBF is the proper forum to address CARE issues. Further, any consumer concerns will be addressed through marketplace competition.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



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